



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35652]

Diana Del Grosso, Ray Smith, Joseph Hatch, Cheryl Hatch, Kathleen Kelley, Andrew Wilklund, and Richard Kosiba—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; establishment of procedural schedule.

SUMMARY: In response to a petition filed on August 1, 2012, by Diana Del Grosso, Ray Smith, Joseph Hatch, Cheryl Hatch, Kathleen Kelley, Andrew Wilklund, and Richard Kosiba (Petitioners), the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e). Petitioners request that the Board declare that specific operations conducted in the town of Upton, Mass. (Town) at a bulk transloading facility (Upton Facility), claimed to be performed by the Grafton and Upton Railroad (G&U), do not constitute “transportation by a rail carrier,” and that the Town’s zoning and other regulations are therefore not preempted under 49 U.S.C. 10501(b). This notice provides for further submissions by the parties and seeks public comment.

DATES: G&U’s reply is due no later than February 25, 2013. Public comments are due no later than February 25, 2013. Petitioners’ response is due by March 11, 2013.

ADDRESSES: Public comments and further submissions by the parties may be submitted via the Board’s e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board’s website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional

paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. FD 35652, 395 E Street, S.W., Washington, DC 20423-0001. Copies of written comments and the parties' filings will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website. In addition, send one copy of all filings to the following: Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, 9 Damonmill Square, Suite 4A4, Concord, MA 01742 (representing Petitioners); James E. Howard, 70 Rancho Road, Carmel Valley, CA 93924 (representing G&U).

FOR FURTHER INFORMATION CONTACT: Marc Lerner, (202) 245-0390. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: Petitioners request that the Board find that the screening, vacuuming, and bagging of wood pellets, and the trucking and storage of bulk goods, at the Upton Facility, on property owned by Upton Development Group, LLC and operated by Grafton Upton Railcare, LLC allegedly on behalf of G&U, are not preempted from certain local zoning and other regulations. Petitioners further assert that the wood pellet packaging services provided at the facility are not integrally related to "rail transportation," and that the bulk transfer terminal activities are not being conducted by a "rail carrier." The petition will serve as Petitioners' opening statement.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The issues raised by Petitioners merit further consideration, and a declaratory order proceeding is thus instituted here. Any person seeking to

comment on the issues raised in Petitioners' petition may submit written comments to the Board pursuant to the schedule and procedures set forth in this notice. Additional information is contained in the Board's decision served January 24, 2013, which is available on our website at "WWW.STB.DOT.GOV."

Decided: January 23, 2013

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner

Clearance Clerk

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